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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,450	04/17/2002	Jurgen Schonlau	AP9658	7780

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EXAMINER

MCANULTY, TIMOTHY P

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,450

Applicant(s)

SCHONLAU ET AL.

Examiner

Timothy P McAnulty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-40 is/are pending in the application.
- 4a) Of the above claim(s) 24-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 33-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johansson et al. in view of DE 197 06 692.

Johansson et al. discloses in figures 1-2 a actuation device comprising a pedal stand 2,3; a base member 14 pivotally connected to said pedal stand; an adjustment mechanism; a generator 36 inherently including a housing (not shown); a pedal lever 6 pivotally connected to said base member; but does not disclose said pedal lever including two legs. However, DE 197 06 692 teaches in figure 2, a pedal mechanism comprising among other things a pedal lever including a first leg and a second leg wherein said second leg is connected to a generator. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Johansson et al. in view of the teachings of DE 197 06 692 that it is old and well known in the art to provide a pedal lever having two legs so as to provide actuation of said generator in a direction opposite to a direction of actuation of said first leg.

Regarding claim 34, DE 197 06 692 further teaches said pedal mechanism being a brake pedal wherein said pedal lever is connected to a generator. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Johansson et al. in view of the teachings of DE 197 06 692 to provide a brake pedal comprising the previously cited structure so as to provide the same actuation of a brake generator regardless of the adjusted position of said pedal mechanism. There is reason to believe, based on

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the similarity of material and structure, that the functional limitations of said pedal lever initiating brake actuation independent of the driver in the case of a vehicle deformation may be an inherent characteristic of the reference combination set forth above. [W]here the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied upon. *In re Best*, 562 F.2d 1252, 195 USPQ 430, 433 (CCPA 1977). Accordingly, the burden is placed upon the applicant to prove that such movement of said pedal lever is not an inherent characteristic of the reference combination.

3. Claims 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johansson et al. in view of DE 197 06 692 as applied to claims 33-37 above and further in view of Rixon et al.

The reference combination previously set forth discloses the basic apparatus but does not disclose said adjustment mechanism comprising a threaded spindle and nut arrangement. However, Rixon et al. teaches among other things an adjustable pedal system for a vehicle comprising a pivotally connected pedal lever and an adjustment mechanism including a treaded spindle and nut adjustment device 48 including an electric motor and a control unit having a memory module. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of DE 197 06 692 in view of Rixon et al. to provide a threaded spindle and nut adjustment mechanism to provide a linear adjustment mechanism instead of a rotary adjustment mechanism.

Regarding claims 39 and 40, it would have been obvious to one of ordinary skill in the art to provide a control unit and memory module so as to store a relative position of said actuation device thus eliminating the necessity of manually re-positioning said actuation device to the stored position.

Response to Arguments

4. Applicant's arguments with respect to claims 33-40 have been considered but are moot in view of the new ground(s) of rejection. Although DE 197 06 692 may not disclose said generator and said pedal lever jointly pivoted to the pedal stand, Johansson et al. discloses such a structure.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bucci can be reached

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on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703.872.9326. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

tpm 
06 January 2004


DAVID A. BUCCI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600